

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JUN - 8 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 93-94
	)	
Scripps Howard Broadcasting Company	)	FCC File No. BRCT-910603KX
	)	
For Renewal of License of	)	
Station WMAR-TV,	)	
Baltimore, Maryland	)	
	)	
and	)	
	)	
Four Jacks Broadcasting, Inc.	)	FCC File No. BPCT-910903KE
	)	
For a Construction Permit	)	
For a New Television	)	
Facility on Channel 2 in	)	
Baltimore, Maryland	)	

TO: The Honorable Richard L. Sippel  
Presiding Administrative Law Judge

**REPLY TO OPPOSITION TO "MOTION TO ENLARGE ISSUES  
TO ADD AN ISSUE  
CONSIDERING USE OF PROFESSIONAL MANAGEMENT"**

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Station WMAR-TV, Baltimore, Maryland and an applicant in the above-referenced proceeding, through counsel and pursuant to Section 1.229 of the Commission's rules, hereby files its reply to "Opposition to 'Motion to Enlarge Issues to Add An Issue Considering Use of Professional Management'" ("Opposition") filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on May 26, 1993.

Four Jacks' Opposition misstates the basis of Scripps Howard's Motion to Enlarge Issues regarding professional management ("Motion") and then relies on this misstatement to contest the

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addition of the issue. Four Jacks characterizes Scripps Howard's Motion as follows:

Scripps Howard's argument appears to be that because there is a pending rulemaking proceeding concerning the possible modification of the integration criterion, its issue should be added. There is no precedential support for [this] position . . . .

Opposition at 2.

Scripps Howard's Motion does not, however, rely at all on the presence of a pending rulemaking.<sup>1</sup> Scripps Howard's arguments instead are based on the Court of Appeals decisions cited in its Motion which hold that a reasoned challenge to the current validity of the integration policy cannot be dismissed by the mere recitation of precedent applying the policy or by general claims of Commission "expertise" on the issue. See Motion at 2. As the reviewing court stated:

The Commission's necessarily wide latitude to make policy based upon predictive judgments deriving from its general expertise . . . implies a correlative duty to evaluate its policies over time to ascertain whether they work--that is whether they actually produce the benefits the Commission originally predicted they would.

Bechtel v. FCC, 957 F.2d 873, 881 (D.C. Cir. 1992) (citations omitted). This directive, and the related discussion in Bechtel of Pacific Gas & Elec. v. FPC, 506 F.2d 33, 38-39 (D.C. Cir. 1974), clearly requires that the Commission "must demonstrate why its

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<sup>1</sup> Scripps Howard's Motion does rely on a statement contained therein, but for the veracity of that statement, not for the fact that a rulemaking is underway. See Motion at 3.

focus on integration is still in the public interest if indeed it concludes that it is," and, at least for non-condified policies, must do so in any contested proceeding when that policy is "properly challenged in a specific case." Bechtel at 881. This demonstration must consist of something more than reliance on the fact that the agency has acted in accord with the contested policy in the past. See id. at 880-81.

Scripps Howard suggests that the Commission still has not adequately responded to the Bechtel court's directives, most likely because it cannot show that its reliance on the integration criteria has accomplished the goals of that policy. The failure to address the "specific contention" of the policy's challenger was criticized by the court in Flagstaff Broadcasting Foundation v. FCC, 979 F.2d 1566, 1571 (D.C. Cir. 1992), and the Commission's further explanation of the roots of its integration policy in Anchor Broadcasting Limited Partnership, 8 F.C.C. Rcd 1674, 1675-77 (1992), still offers no assessment of the policy's effectiveness with respect to the specific applicant proposals presented there.

Separately, the Commission decision in the earlier Anchor Broadcasting Limited Partnership decision, 7 F.C.C. Rcd 4566, that is cited in Four Jacks' pleading for the position that the current integration policy must apply in this case, is not binding. The Commission there expressly relied on avoiding delay in the initiation of new service to the public as the principal basis for not addressing the validity of its integration criteria prior to resolving that case and other similar contested proceedings. See

8 F.C.C. Rcd at 4568. No such concern about delay in the initiation of a new service applies in this renewal proceeding.

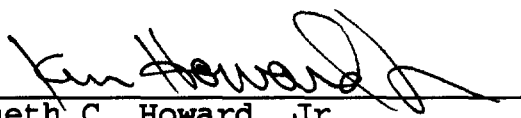
~~In addition the Commission has no concern in Anchor Broadcasting~~

result to Four Jacks from the application of a proper comparative standard with respect to integration credit in this case.

WHEREFORE, for the reasons stated herein, Scripps Howard respectfully requests that its Motion to Enlarge Issues to Add an Issue Considering Use of Professional Management be granted.

Respectfully submitted,

SCRIPPS HOWARD BROADCASTING  
COMPANY

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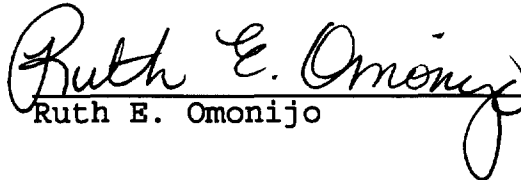
I, Ruth E. Omonijo, a secretary in the law offices of Baker & Hostetler, here certify that I have caused copies of the foregoing "Reply to Opposition to 'Motion to Enlarge Issues to Add an Issue Considering Use of Professional Management'" to be sent via First Class United States Mail this 8thday of June, 1993 to the following:

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